

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

8

SALVADOR LOERA LARA
and BERTHA LOERA LOPEZ,

Case No. 19-318-17-HCM

Debtors.

§ Chapter 11

YERMOLAND ENTERPRISES, INC.

8

Movant,

8

SALVADOR LOERA LARA
and BERTHA LOERA LOPEZ,

18

Respondents.

8

**YERMOLAND ENTERPRISES, INC.'S MOTION TO PROHIBIT
USE OF CASH COLLATERAL**

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO
YOUR INTERESTS.**

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

COMES NOW, YERMOLAND ENTERPRISES, INC. ("Yermoland"), moving to prohibit use of its cash collateral by SALVADQR LOERA LARA and BERTHA LOERA LOPEZ (the "Debtors") and would show as follows:

1. The Court has jurisdiction over this matter under 28 U.S.C. §§157 and 1334 and 11 U.S.C. §§362 and 363.

2. Venue of this case and this Motion is proper before this Court in this District under 28 U.S.C. §§1408 and 1409.

3. The Debtors may be served with a copy of this pleading through its attorney of record, Michael Nevarez, P.O. Box 12247, El Paso, Texas 79913.

4. The Debtors filed their voluntary Chapter 11 Petition in this case on November 1, 2019.

5. Yermoland is the owner and holder of three promissory notes from the Debtors to the order of Yermoland, as described in the following three paragraphs.

6. The Note dated May 7, 2019 in the original principal amount of \$800,000.00 from the Debtors to the order of Yermoland is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement dated May 7, 2019 from the Debtors in favor of Yermoland as beneficiary, recorded under Clerk's File No. 20190035392, Real Property Records of El Paso County, Texas, covering the property described as:

Lot 10, Block 2, "RANCHOS DEL SOL" UNIT ONE, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 51, Page 30, Plat Records of El Paso County, Texas, municipally known as 12111 Swaps Drive, El Paso, Texas 79936,

(the "Swaps Parcel").

7. The Note dated July 24, 2018 in the original principal amount of \$3,500,000.00 from the Debtors to the order of Yermoland is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement dated July 24, 2018, from the Debtors

in favor of Yermoland as beneficiary, recorded under Clerk's File No. 20180057685, Real Property Records of El Paso County, Texas, covering the properties described as follows:

- (a) Parcel 1: Lot 12, Block 1, HILL CREST CENTER, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 1, Page 56, Plat Records of El Paso County, Texas, municipally known as 13644 David, El Paso, Texas 79938;
- (b) Parcel 2: Tract 4, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 3462 Rene, El Paso, Texas 79938;
- (c) Parcel 3: Tract 3, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 13821 Davidson Blvd., El Paso, Texas 79938;¹
- (d) Parcel 4: Tract 191, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 13540 La Von., El Paso, Texas 79938; and
- (e) Parcel 5: Lot 25, Block 1, HILL CREST CENTER, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 1, Page 56, Plat Records of El Paso

¹ 13821 Davidson Drive may now have a different or alternative address on Edgemere Drive, and the Debtor's Schedules refer to it as 14821 Edgemere Drive.

County, Texas,
(the "Hill Crest Properties").

8. The Note (Second Lien) dated February 28, 2019, in the original principal amount of \$210,000.00 from the Debtors to the order of Yermoland is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement (Second Lien) dated February 28, 2019, from the Debtors in favor of Yermoland as beneficiary recorded under Clerk's File No. 20190015335, Real Property Records of El Paso County, Texas, covering the Hill Crest Properties.

9. Each of the above-described Deeds of Trust documents contains an assignment of rents from the Debtors to Yermoland.

10. The Debtors are apparently leasing several of the Properties to third parties pursuant to leases (the "Leases").

11. The Debtors are apparently receiving rentals from such third parties under the Leases (the "Rents").

12. The Rents constitute "cash collateral" of Yermoland within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral").

13. Yermoland does not consent to the Debtors' use of the Cash Collateral.

14. The Debtors are therefore prohibited by Section 363(c)(2) of the Bankruptcy Code from using the Cash Collateral.

15. On or about November 12, 2019, Yermoland gave notice to the Debtors c/o their legal counsel to cease use of the Cash Collateral. A true and correct copy of notice is hereby attached hereto as Exhibit "1" and incorporated herein. Despite such notice and demand, the Debtors appear to have continued to utilize the Cash Collateral without authorization or consent.

16. Yermoland may be willing to consent to use of Cash Collateral upon entry of a mutually acceptable cash collateral order. Unless and until that occurs, however, the Debtors have no right or authority to use any of the Cash Collateral.

17. Based on the foregoing, additionally and in the alternative, Yermoland requests that this Court prohibit use of Cash Collateral by the Debtors, unless and until an appropriate cash collateral order has been entered.

18. Yermoland reserves right to amend or supplement this pleading.

WHEREFORE PREMISES CONSIDERED, Yermoland requests that it be granted such relief as set forth above, and such other and further relief, both at law or in equity, to which it may be justly entitled.

Respectfully submitted,

MOUNCE, GREEN, MYERS, SAFI, PAXSON
& GALATZAN
A Professional Corporation
P.O. Drawer 1977
El Paso, Texas 79950-1977
(915) 532-2000
Fax: (915) 541-1548
pine@mgmsg.com

/s/ Clyde A. Pine, Jr.

Clyde A. Pine, Jr.
State Bar No. 16013460
Attorney for Yermoland Enterprises, Inc.

CERTIFICATE OF SERVICE

I, Clyde A. Pine, Jr., hereby certify on the 6th day of December, 2019, a true and correct copy of the foregoing was forwarded by e-mail and by certified mail, return receipt requested to Michael R. Nevarez, mnevarez@lawofficesmrn.com, The Nevarez Law Firm, PC, P.O. Box 12247, El Paso, Texas 79913.

/s/ Clyde A. Pine, Jr.
Clyde A. Pine, Jr.



MOUNCE, GREEN, MYERS,
SAFI, PAXSON & GALATZAN
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

S. ANTHONY SAFI
H. KEITH MYERS
CARL H. GREEN
JOHN S. BIRKELBACH
KURT G. PAXSON
MARK D. DORE
CLYDE A. PINE, JR.*
BRUCE A. KOEHLER*
DARRYL S. VEREEN
ANDRES E. ALMANZAN*
LAURA ENRIQUEZ*
RAMON BENAVIDES III*
DAVID M. MIRAZO*
MERWAN N. BHATTI*
MONICA L. PEREZ*
RYAN LITTLE*
GARRETT J. YANCEY*

FREDERICK C. HUTTERER
JONAH V. CHAVEZ*
CAL MUNDELL
MICHELLE D. ESPARZA
MATTHEW G. MARQUEZ

STEVEN L. HUGHES
ARTHUR R. PIACENTI
RENE CARLO BENAVIDES
OF COUNSEL

MORRIS A. GALATZAN
(1911-1999)
WILLIAM T. KIRK
(1940-2002)
WILLIAM J. MOUNCE
(1929-2018)

TELEPHONE: (915) 532-2000

MAILING ADDRESS:
P.O. BOX 1977
EL PASO, TEXAS 79999-1977

STREET ADDRESS:
100 N. STANTON, SUITE 1000
EL PASO, TEXAS 79901-1463

FACSIMILE: (915) 541-1548
WEBSITE: WWW.MGMSG.COM

*ALSO MEMBER OF NEW MEXICO BAR

November 12, 2019

Via E-mail, Fax, Certified Mail,
Return Receipt Requested, and
First Class Mail

Michael Nevarez
The Nevarez Law Firm
P.O. Box 12247
El Paso, Texas 79913

Re: *In re: Salvador Loera and Bertha Loera*, Case No. 19-31817 (HCM), United States
Bankruptcy Court, Western District of Texas

Dear Michael:

On behalf Yermoland Enterprises, Inc. ("Yermoland"), notice is hereby given to your clients, Salvador Loera and Bertha Loera ("Debtors") as follows: (a) Yermoland is the owner and holder of three promissory notes from the Debtors to the order of Yermoland; (b) one of the promissory notes is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement dated May 7, 2019 from the Debtors in favor of Yermoland as beneficiary, recorded under Clerk's File No. 20190035392, Real Property Records of El Paso County, Texas, covering the real property described as follows:

Lot 10, Block 2, "RANCHOS DEL SOL" UNIT ONE, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 51, Page 30, Plat Records of El Paso County, Texas, municipally known as 12111 Swaps Drive, El Paso, Texas 79936;

(b) another promissory note is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement dated July 24, 2018, from the Debtors in favor of Yermoland as beneficiary, recorded under Clerk's File No. 20180057685, Real Property Records of El Paso County, Texas, covering the real properties described as follows:

Parcel 1: Lot 12, Block 1, HILL CREST CENTER, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 1,

Michael Nevarez
November 12, 2019
Page 2

Page 56, Plat Records of El Paso County, Texas, municipally known as 13644
David, El Paso, Texas 79938;

Parcel 2: Tract 4, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 3462 Rene, El Paso, Texas 79938;

Parcel 3: Tract 3, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 13821 Davidson Blvd., El Paso, Texas 79938;

Parcel 4: Tract 191, HILL CREST ESTATES, in El Paso County, Texas, according to the Plat thereof recorded in Volume 10, Page 14, Plat Records, El Paso County, Texas, municipally known as 13540 La Von, El Paso, Texas 79938; and

Parcel 5: Lot 25, Block 1, HILL CREST CENTER, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 1, Page 56, Plat Records of El Paso County, Texas;

(c) another note is secured by that certain Deed of Trust, Security Agreement, Assignment of Rents, and Financing Statement (Second Lien) dated February 28, 2019, from the Debtors in favor of Yermoland as beneficiary recorded under Clerk's File No. 20190015335, Real Property Records of El Paso County, Texas, covering the same real properties described in the immediately prior subsection; (d) each of the above-described Deeds of Trust documents contain an assignment of rents from the Debtors to Yermoland; (e) the Debtors are apparently leasing several of the parcels of real properties described above to third parties pursuant to leases (the "Leases"); (f) the Debtors are apparently receiving rentals from such third parties under the Leases (the "Rents"); (g) the Rents constitute "cash collateral" of Yermoland within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral"); (h) Yermoland does not consent to the Debtors' use of the Cash Collateral; and (i) the Debtors are therefore prohibited by Section 363(c)(2) of the Bankruptcy Code from using the Cash Collateral.

Yermoland may be willing to consent to use of Cash Collateral upon entry of a mutually acceptable cash collateral order. Unless and until that occurs, however, the Debtors have no right or authority to use any of the Cash Collateral.

Please contact me immediately if you have questions, comments, or objections regarding the foregoing.

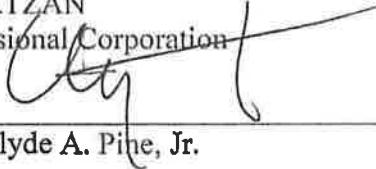
Michael Nevarez
November 12, 2019
Page 3

Very truly yours,

MOUNCE, GREEN, MYERS, SAFI, PAXSON
& GALATZAN

A Professional Corporation

By:


Clyde A. Pine, Jr.

cc: Yermoland Enterprises, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

SALVADOR LOERA LARA

and BERTHA LOERA LOPEZ

Debtors.

Case No. 19-318-17-HCM

Chapter 11

YERMOLAND ENTERPRISES, INC.

Movant,

SALVADOR LOERA LARA

and BERTHA LOERA LOPEZ,

Respondents.

ORDER GRANTING
YERMOLAND ENTERPRISES, INC.'S MOTION TO
PROHIBIT USE OF CASH COLLATERAL

On this day came to be considered the Motion to Prohibit Use of Cash Collateral filed by Yermoland Enterprises, Inc. (“Yermoland”) against Salvador Loera Lara and Bertha Loera Lopez

(collectively, the “Debtors”), and the Court, considering the pleadings, evidence, and arguments, finds and is of the opinion that the Motion should be granted;

IT IS, THEREFORE, ORDERED that the Rents [as defined in the Motion] constitute cash collateral of Yermoland, and that the Debtors are prohibited from spending or otherwise utilizing any of the Rents, unless and until authorized by subsequent order of this Court.

###

Submitted by:

Clyde A. Pine, Jr.
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79999
(915) 532-2000
Fax: (915) 541-1548

Copies should be sent to:

Clyde A. Pine, Jr.
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79999
(915) 532-2000
Fax: (915) 541-1548

Michael R. Nevarez
The Nevarez Law Firm, PC
P.O. Box 12247
El Paso, Texas 79913
(915) 584-8000
Fax: (915) 845-3405
mnevarez@lawofficesmrrn.com

U.S. Trustee
P.O. Box 1539
San Antonio, Texas 78295